

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN LISCHESKI,

Plaintiff,

No. CIV S-05-0271 FCD JFM P

vs.

LT. SWEIGERT, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On March 17, 2005, the magistrate judge issued an order that granting plaintiff's motion for leave to proceed in forma pauperis, requiring prison officials to deduct partial payments toward the filing fee in accordance with 28 U.S.C. § 1915(b), dismissing plaintiff's complaint with leave to amend, denying plaintiff's motion for appointment of counsel, and denying a motion for preliminary injunction without prejudice to its renewal after the submission of an adequate complaint. On April 28, 2005, plaintiff filed a request for reconsideration of all aspects of that order except the dismissal of his complaint with leave to amend.¹

¹ The court construes plaintiff's motion for reconsideration as including a request for extension of time to file an amended complaint. Good cause appearing, that request will be

1 Local Rule 72-303(b), states “rulings by Magistrate Judges shall be final if no
2 reconsideration thereof is sought from the Court within ten court days . . . from the date of
3 service of the ruling on the parties.” E.D. Local Rule 72-303(b). Plaintiff’s request for
4 reconsideration of the magistrate judge’s order of March 17, 2005 is therefore untimely.

5 Moreover, review of the record shows that the orders by the magistrate judge
6 challenged herein were neither “clearly erroneous or contrary to law.” See E.D. Local Rule 72-
7 303(f). Accordingly, those orders will be affirmed.

8 In accordance with, IT IS ORDERED that:

- 9 1. Plaintiff’s April 28, 2005 motion for reconsideration is granted;
10 2. On reconsideration, the magistrate judge’s March 17, 2005 order is affirmed;
11 and
12 3. Plaintiff is granted thirty days from the date of this order to file an amended
13 complaint.

14 DATED: June 16, 2005

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16 /s/ Frank C. Damrell Jr.
17 FRANK C. DAMRELL JR.
United States District Judge

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26 granted and plaintiff will be granted thirty days from the date of this order in which to file an
amended complaint.